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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,200	11/14/2003	Stefan Ihde	67185-004	2663
29493	7590	12/11/2007		
HUSCH & EPPENBERGER, LLC 190 CARONDELET PLAZA SUITE 600 ST. LOUIS, MO 63105-3441			EXAMINER WERNER, JONATHAN S	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 12/11/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/714,200

Applicant(s)

IHDE, STEFAN

Examiner

Jonathan Werner

Art Unit

3732

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 October 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

MELBA N. BUMGARNER  
PRIMARY EXAMINER

Jonathan Werner  
Examiner

Continuation of 11. does NOT place the application in condition for allowance because: In regard to independent claim 42, Applicant remarks that "the claims structurally recite the requirement that the tooth end and base end be opposite ends of the shaft." Applicant subsequently remarks that Figures 4, 5, 9, and 14 (of the Robinson '214 reference) "make clear that the perpendicular structure 12 is not at an opposite end of the shaft from the 'tooth end' as claimed, but rather the same end." However, Examiner does not understand Applicant's allegation since there is no instance of the alleged "tooth end" presented in any of the claims. Additionally, Examiner points out that paragraph 4 of the Final Office Action (8/15/07) describes the claimed "base" as reference numeral 30 (as shown clearly in Figure 13) - not reference numeral 12 (shown in Figure 11) as alleged by Applicant. Though for the purpose of examination, Figure 11 shows a slightly modified alternative embodiment of the device shown in Figure 13. Here, the free end of the shaft (11,23) of Figures 13 and 11, respectively, certainly appears to be opposite the end of said shaft that is attached to the perpendicular base structure (30,12) in each respective Figure.

Applicant next alleges that reference numeral 12 was cited in the previous office action as the perpendicular base, but is "actually a guided tissue regeneration plate." As noted above, Examiner never referenced element 12 in the previous rejection, and instead referenced element 30 as representative of the claimed "base." Regardless, for the purpose of examination, it will be understood that reference numerals 12 and 30 both represent said "base." Accordingly, Examiner notes that an applicant is entitled to be his or her own lexicographer to define elements of the invention. However, for the purpose of examination, so long as a prior art reference structurally meets the claimed element, then said reference reads on the claim. In this case, Examiner notes that according to dictionary.com, a base is "the bottom support of anything," or alternatively "that on which a thing stands or rests." Clearly, the "plate" (30) of Robinson acts as the bottom support for shaft (11), or in other words, the plate is that on which the shaft stands or rests. Furthermore, the plate of Robinson is also defined by the same structural integrity that the claims set forth - notably said plate is shown as substantially planar, rectilinear, and orthogonal to the longitudinal axis of the shaft in at least two non-parallel directions. It is therefore apparent that said plate reads on the claimed base of the present invention.